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U.S. Citizenship
and Immigration
Services

135

FILE: EAC 03 034 55120 Office: VERMONT SERVICE CENTER

Date: JUL 05 2003

IN RE: Petitioner:
Beneficiary

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner is a research associate at Brown Medical School, studying rheumatoid arthritis and osteoarthritis. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

We note that, while the petitioner is still technically represented by counsel, there is no indication that counsel participated in the preparation or filing of the appeal.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer.

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the

“prospective national benefit” [required of aliens seeking to qualify as “exceptional.”] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien’s past record justifies projections of future benefit to the national interest. The petitioner’s subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term “prospective” is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We note that, while the petitioner is technically represented by counsel, there is no indication that counsel participated in the preparation or filing of the appeal.

A description of the petitioner’s work appears in an unsigned statement submitted with the initial filing. It reads, in pertinent part:

[The petitioner] is a medical doctor who studies the “extracellular matrix” of bone and cartilage. In non-technical terms, [the petitioner] studies the underlying mechanisms by which rheumatoid arthritis and osteoarthritis develop. By understanding these mechanisms, [the petitioner] hopes to forge a path leading to cures for these diseases. The work that [the petitioner] has performed to date, and his past accomplishments, point to the strong likelihood that his continued work in the field of research will yield fruits that will benefit the entire nation. . . .

[The petitioner] is well respected, and his colleagues, who themselves are distinguished in the fields of medical and scientific research feel that he is a tremendous asset. . . .

[The petitioner] has a past record that clearly justifies projections of great future benefit to the national interest.

In a personal statement, the petitioner describes his work in greater detail:

My present scientific goals are to investigate extracellular matrix proteins (matrilins) in local response, filamentous formation and biological development of bone and cartilage. My long-term goals are to study the pathogenesis of rheumatoid arthritis and osteoarthritis and to provide new therapeutic strategies to stop or slow down the progression of bone and cartilage destruction. . . .

The matrilins are a novel family of oligomeric extracellular proteins. Four matrilins have been identified in several species. . . . The molecular structure and distribution pattern suggest

that matrilin 2 acts as adapter molecule connecting other proteins and proteoglycans in the extracellular matrix. I [have been] studying the functions and relationship between extracellular matrix or epithelial cells and matrilin 2 filamentous network. This will get valuable information to aid in the understanding of the molecular mechanisms involved in rheumatoid and osteoarthritis and also it will provide new therapeutic strategies to stop or slow down the progression of bone and cartilage destruction in the patients of rheumatoid arthritis and osteoarthritis.

The petitioner has worked under Professor [REDACTED], first at the Pennsylvania State University (Penn State), and later at Brown Medical School's Rhode Island Hospital, where Prof. [REDACTED] is now chair of Orthopaedic Research. Prof. [REDACTED] states:

[The petitioner] is an internationally recognized researcher in the pathology and molecular biology of rheumatoid arthritis and osteoarthritis. . . .

[The petitioner's] research goals are to identify potential molecular targets for pharmaceutical compounds for gene or immuno-therapy that will prevent, relieve, or cure rheumatoid arthritis and osteoarthritis. These compounds may also promote normal bone and cartilage growth. . . .

[The petitioner] is an ideal candidate to work in our group because of the advanced research he has done in the field of orthopaedics and osteoarthritis.

With regard to this last assertion, the petitioner is already authorized to work in Prof. [REDACTED] group under the terms of his nonimmigrant visa. The record shows that the hospital hired him on a temporary basis, and that his three-year appointment ends August 31, 2005. Prof. [REDACTED] does not state that the hospital intends to employ the petitioner after that date. The petitioner's ability to work temporarily at Rhode Island Hospital is not in question or at stake in this proceeding.

Dr. [REDACTED] is an assistant professor at Penn State, where the petitioner worked as a postdoctoral research associate from 1998 to 2002. He states:

[The petitioner's] research revealed that matrilins might provide a link between other extracellular matrix molecules and the cell. He obtained some recent exciting results showing that the maintenance of an intact filamentous network of matrilins plays an essential role in maintaining cartilage integrity. Thus, it is possible that a disruption of this network might lead to cartilage destruction as occurring in osteoarthritis and rheumatoid arthritis. . . . In my opinion, there is no doubt that [the petitioner's] research will provide new therapeutic strategies to stop or slow down the progression of cartilage destruction. . . .

It is clear to me that [the petitioner] . . . has made major contributions and will continue to make similar contributions in the future.

Several other witnesses, with varying ties to the petitioner (mostly via Penn State), repeat the assertion that the petitioner has made very significant contributions in researching the causes and mechanisms of rheumatoid arthritis and osteoarthritis.

The petitioner submits copies of his published articles, as well as evidence of 34 citations of his work. Of these 34 citations, 20 are self-citations by the petitioner and/or his coauthors. The greatest number of independent citations that any one of the petitioner's articles has garnered is six.

The director denied the petition, in part based on the finding that the petitioner's work is not national in scope. Medical research, by nature, has potentially national impact; new treatments for arthritis would not be limited to a particular geographic area, and information about its causes can be of use to researchers everywhere. We withdraw this finding by the director.

The director noted that, while several witnesses claim the petitioner enjoys a great deal of recognition within the research community, these witnesses have close ties to the petitioner, and the objective, documentary evidence in the record does not support their claims.

On appeal, the petitioner states: "My papers have been cited worldwide at least 122 times according to the Web of Science search I did as of October 12, 2004." At least a third of these citations are self-citations by the petitioner and/or his co-authors, but there remain several dozen independent citations; two of the petitioner's articles have over 20 independent citations each.

The petitioner also submits new letters. Most of the letters are from the petitioner's collaborators. One apparently independent witness is Dr. [REDACTED] of the Hungarian Academy of Sciences, who states "I know [the petitioner] through his scientific papers and Orthopedic Research Society (ORS) abstracts. [The petitioner] has performed important studies on the function of matrilins." Dr. [REDACTED] states that the petitioner "is an internationally recognized outstanding scientist. He has made a great contribution to the analysis of the pathogenesis and mechanisms of OA and RA" (osteoarthritis and rheumatoid arthritis). The other witnesses note the heavy citation of the petitioner's published work.

The evidence newly submitted on appeal supports the contention that the petitioner's work has consistently attracted notice outside his immediate circle of collaborators and mentors, and has significance beyond the contributions that are expected of every scientific researcher. Because the director never issued a request for evidence pursuant to 8 C.F.R. § 103.2(b)(8), the petitioner never had the opportunity to submit this supplemental evidence prior to the denial of the petition.

It does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given field of research, rather than on the merits of the individual alien. That being said, the above testimony, and further testimony in the record, establishes that the scientific community recognizes the significance of this petitioner's research rather than simply the general area of research. The benefit of retaining this alien's services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.